

Montana Water Court
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FILED
01/06/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0600-R-2022
Lambert, Kathryn
17.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: State of Montana Department of Fish, Wildlife & Parks

CASE 43B-0600-R-2022

43B 14385-00

OBJECTOR: State of Montana Department of Fish, Wildlife & Parks

NOTICE OF INTENT TO APPEAR: Emigrant Peak Ranch LLC

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The State of Montana Department of Fish, Wildlife & Parks objected to its claim 43B 14385-00. Emigrant Peak Ranch LLC filed a notice of intent to appear. This claim appeared in the Preliminary Decree with the following remark:

PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 500 MINERS INCHES AND VOLUME OF 5725 ACRE FEET WILL BE REINSTATED.

On October 14, 2022 the parties filed a Stipulation And Agreement. The Stipulation And Agreement is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

Rule 2(a)(67), W.R.C.E.R., states: "'Supplemental Rights' means separate water rights for the same purpose, owned by the same claimant, and used on overlapping places of use."

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree does not include a flow rate or volume. The flow rate should be 7.50 cfs. The volume should be 714.00 acre feet. The flow rate and volume remark should be removed as having served its notice purpose.

2. The Preliminary Decree states that the point of diversion, period of diversion, and means of diversion are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWNESW	32	6S	8E	PARK

Period of Diversion: MARCH 15 TO OCTOBER 31

Diversion Means: HEADGATE

The point of diversion, period of diversion, and means of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWNESW	32	6S	8E	PARK

Period of Diversion: MARCH 15 TO JULY 31

Diversion Means: HEADGATE

Ditch Name: BLAKESLEE DITCH AKA SIXMILE DITCH

Reservoir: OFFSTREAM

Reservoir Name: DAILEY LAKE

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWNESW	36	6S	7E	PARK

Diversion to Reservoir: DIVERSION #1

Depth: 24.00 FEET

Surface Area: 204.00 ACRES

Capacity: 1,958.00 AF

3. The Preliminary Decree states that the period of use is March 15 to October 31.

The period of use should be January 1 to December 31.

4. The Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SW	36	6S	7E	PARK
NW	1	7S	7E	PARK

The requested changes to the place of use are to include the entire perimeter of Dailey Lake as shown on the map attached to the Statement of Claim. The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SW	36	6S	7E	PARK
SWSE	36	6S	7E	PARK
NW	1	7S	7E	PARK
NWNE	1	7S	7E	PARK
NENE	2	7S	7E	PARK

THE PLACE OF USE IS DAILEY LAKE

5. The following general remark should be added as requested: THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0600-R-2022.

6. The Stipulation And Agreement requests the addition of the supplemental rights remark to this claim and two others. The three claims are for three different purposes and are not owned by the same claimant. The three claims do not qualify as supplemental rights. The supplemental rights remark should not be added.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 14385-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620 0701

Priority Date: APRIL 27, 1945

Type of Historical Right: FILED

Purpose (use): FISH AND WILDLIFE

Flow Rate: 7.50 CFS

Volume: 714.00 AC-FT

Source Name: SIXMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	32	6S	8E	PARK

Period of Diversion: MARCH 15 TO JULY 31

Diversion Means: HEADGATE

Ditch Name: BLAKESLEE DITCH AKA SIXMILE DITCH

Reservoir: OFFSTREAM **Reservoir Name:** DAILEY LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	36	6S	7E	PARK

Diversion to Reservoir: DIVERSION # 1

Depth: 24.00 FEET

Surface Area: 204.00 ACRES

Capacity: 1,958.00 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	36	6S	7E	PARK
2			SWSE	36	6S	7E	PARK
3			NW	1	7S	7E	PARK
4			NWNE	1	7S	7E	PARK
5			NENE	2	7S	7E	PARK

THE PLACE OF USE IS DAILEY LAKE

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0600-R-2022.